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In re Application of	:	
DEGANI, et al.	:	
U.S. Application No.: 10/593,887	:	DECISION ON PETITIONS
PCT No.: PCT/IB05/01252	:	
Int. Filing Date: 08 April 2005	:	UNDER 37 CFR 1.181
Priority Date: 08 April 2004	:	
Attorney Docket No.: 7040-NO6-075US	:	AND 37 CFR 1.137(b)
For: THREE TIME POINT LUNG CANCER	:	
DETECTION, DIAGNOSIS AND ASSESSMENT	:	
OF PROGNOSIS	:	

This decision is in response to applicant's petition to withdraw the holding of abandonment filed 06 August 2008 in the United States Patent and Trademark Office (USPTO). No petition fee is required.

BACKGROUND

On 08 April 2005, applicant filed international application PCT/IB05/01252 which claimed priority of an earlier application filed 08 April 2004. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 20 October 2005. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 08 October 2006.

On 21 September 2006, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1).

On 20 June 2007, applicant was mailed a "Notification of Missing Requirements" (Form PCT/DO/EO/905) informing applicant that an executed oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required. Applicant was afforded two months to file the required response and advised that this period could be extended pursuant to 37 CFR 1.136(a).

On 10 July 2008, applicant was mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) informing applicant that applicant had failed to respond to the Form PCT/DO/EO/905 mailed 20 June 2007 within the time period set therein and that above-identified application was abandoned as to the United States.

On 06 August 2008, applicant filed the petitions considered herein.

DISCUSSION

I. Petition Under 37 CFR 1.181 to Withdraw Holding of Abandonment

The Manual of Patent Examining Procedure (MPEP) at 711.03(c) and the Official Gazette, at 1156 OG 53, provides the grounds that an Office action was not received:

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner **>describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm.

Applicant has provided a statement that the Form PCT/DO/EO/905 was never received. However, applicant has not included a copy of the relevant docket record, explained that a search of the file jacket and application contents revealed that the Form PCT/DO/EO/905 had not been received nor provided a statement describing the firm's docketing system. As such, it is not possible to grant applicant's petition under 37 CFR 1.181 to withdraw the holding of abandonment.

II. Petition Under 37 CFR 1.137(b)

Applicant has asked that in the alternative the petition be considered under 37 CFR 1.137(b).

The petition to revive under 37 CFR 1.137(b) is hereby **GRANTED** as follows:

Applicant's statement that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" and the prompt filing of the petition satisfies the requirement of 37 CFR 1.137(b)(3).

A review of the application file reveals that applicant has now provided an executed declaration of the inventors. Therefore, the request to revive the application abandoned under 35 U.S.C. 371(d) is granted as to the National stage in the United States of America. Further, a

review of the application file reveals that all of the requirements of 35 U.S.C. 371 for entry into the national stage in the United States have been satisfied. As authorized, the small entity petition fee will be charged to deposit account number 50-0601.

CONCLUSION

For the reasons detailed above, applicant's petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The application has an international filing date of 08 April 2005 under 35 U.S.C. 363 and will be given a date of **06 August 2008** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for treatment in accordance with this decision.



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